(B) the costs resulting from the lowering of the construction threshold from 5 acres to 1 acre;

(2) an explanation of the rationale of the Administrator for lowering the construction site threshold from 5 acres to 1 acre, including—

(A) an explanation, in light of recent court decisions, of why a 1-acre measure is any less arbitrarily determined than a 5-acre measure; and

(B) all qualitative information used in determining an acre threshold for a construction site;

(3) documentation demonstrating that stormwater runoff is generally a problem in communities with populations of 50,000 to 100,000 (including an explanation of why the coverage of the regulation is based on a census-determined population instead of a water quality threshold);

(4) information that supports the position of the Administrator that the Phase II stormwater program should be administered as part of the National Pollutant Discharge Elimination System under section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342); and

(b) PHASE I REGULATIONS—No later than 120 days after enactment of this Act, the Environmental Protection Agency shall submit to the Senate Environment and Public Works Committee a report containing—

(1) a detailed explanation of the impact, if any, that the Phase I program has had in improving water quality in the United States (including a description of specific measures that have been successful and those that have been unsuccessful).

(c) FEDERAL REGISTER.—The reports described in subsections (a) and (b) shall be published in the Federal Register for public comment.

COVERDELL AMENDMENT NO. 1801

Mr. STEVENS (for Mr. COVERDELL) proposed an amendment to the bill, H.R. 2684, supra; as follows:

On page 38, line three, insert before the period the following: '': *Provided further*, That no amounts made available to provide housing assistance with respect to the purchase of any single family real property owned by the Secretary or the Federal Housing Administration may discriminate between public and private elementary and secondary school teachers'';

On page 40, line two, insert before the period the following: '': *Provided further*, That no amounts made available to provide housing assistance with respect to the purchase of any single family real property owned by the Secretary or the Federal Housing Administration may discriminate between public and private elementary and secondary school teachers''.

CRAIG AMENDMENT NO. 1802

Mr. STEVENS (for Mr. CRAIG) proposed an amendment to the bill, H.R. 2684, supra; as follows:

On page 113, between lines 16 and 17, insert the following:

SEC. 4 . PESTICIDE TOLERANCE FEES.

None of the funds appropriated or otherwise made available by this Act shall be used to promulgate a final regulation to implement changes in the payment of pesticide tolerance processing fees as proposed at 64 Fed. Reg. 31040, or any similar proposals. The Environmental Protection Agency may proceed with the development of such a rule.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON IMMIGRATION

Mr. STEVENS. Mr. President, the Immigration Subcommittee of the Committee on the Judiciary requests unanimous consent to conduct a markup on Friday, September 24, 1999, beginning at 9:30 a.m. in Dirksen room 226.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

GOVERNMENT WHISTLEBLOWERS

• Mr. GRASSLEY. Mr. President, I rise to warn the Senate of intensifying harassment against government whistleblowers. This trend threatens Congress' right to know, and preserves secrecy that shields bureaucratic misconduct. From the IRS to the State Department, retaliation is increasing against government employees who blow the whistle on wrongdoing by high government officials.

How did we get here? In the view of this Senator, one of the major problems has been the judicial activism of the Federal Circuit Court of Appeals, which has jurisdiction over challenges by government employees to illegal retaliatory acts, and which has grossly misinterpreted existing federal laws. To illustrate my concerns, I am enclosing for the RECORD a New York Times editorial; and a Federal Times article by the Government Accountability Project about the most extreme Federal Circuit precedent, involving Air Force whistleblower John White. This precedent could functionally cancel both the whistleblower law and the Code of Ethics.

I have no intention of passively acquiescing to the judicial equivalent of contempt of Congress.

The material follows:

[From the New York Times, May 1, 1999]

HELPING WHISTLE-BLOWERS SURVIVE

Jennifer Long, the Internal Revenue Service agent who nearly lost her job two weeks ago after publicly blowing the whistle on abuses at the agency, was rescued at the last minute by the intervention of an influential United States Senator. But the fact that her employers had no inhibitions about harassing her is clear evidence that the laws protecting whistle-blowers need to be strengthened. As they stand, these laws merely invite the kind of retaliation that Mrs. Long endured.

A career tax auditor, Mrs. Long was the star witness at Senate Finance Committee hearings convened in 1997 by William Roth of Delaware to investigate complaints against the IRS. She was the only IRS witness who did not sit behind a curtain and use a voice-distortion device to hide her identity. She accused the agency of preying on weaker taxpayers and ignoring cheating by those with the resources to fight back. She has since said that she was subjected to petty harassments from the moment she arrived back at her district office in Houston. Then, on April 15 of this year, she was given what amounted to a termination notice, at which point Mr. Roth intervened with the IRS commissioner and saved her job—at least for now.

Had he not intervened, Mrs. Long's only hope of vindication would have been the remedies provided by the Civil Service Reform Act of 1978 and the Whistle-Blower Protection Act of 1989. These two statutes prescribe a tortuous and uncertain appeals process that in theory guarantees a whistle-blower free speech without fear of retaliation, but in practice is an exercise in frustration. Despite recent improvements, only a handful of Federal employees, out of some 1,500 who appealed in the last four years, have prevailed in rulings issued by the Government's administrative tribunal, the Merit System Protection Board. Overwhelmingly, the rest of the cases were screened out on technical grounds or were settled informally with token relief.

A few prominent whistle-blowers have won redemption outside the system. Frederic Whitehurst, the chemist who was dismissed after disclosing sloppiness and possible dishonesty in the Federal Bureau of Investigation's crime laboratory, won a sizable cash settlement because he had a first-class attorney who mounted an artful public relations campaign. Ernest Fitzgerald, the Pentagon employee who disclosed massive cost overruns, survived because he was almost inhumanly persistent and because his cause, like Mrs. Long's, attracted allies in high places. But the prominence of an issue does not guarantee survival for the employee who discloses it. Notra Trulock, the senior intelligence official at the Energy Department who tried to alert his superiors to Chinese espionage at a Government weapons laboratory, has since been demoted.

Senator Charles Grassley, an Iowa Republican, has been seeking ways to strengthen the 1989 law with the help of the Government Accountability Project, a Washington advocacy group that assists whistle-blowers. One obvious improvement would be to give whistle-blowers the option to press their claims in the Federal courts, where their cases could be decided by a jury. To guard against clogging the system with frivolous litigation, the cases would first be reviewed by a nongovernment administrative panel. But the point is to give whistle-blowers an avenue of appeal outside the closed loop in which they are now trapped.

A reform bill along these lines passed the House in 1994 but died in the Senate. With Mrs. Long's case fresh in mind, the time has come for both Houses to re-examine the issue.

[From the Federal Times, July 26, 1999]

COURT TURNS WHISTLEBLOWER ACT INTO TROJAN HORSE

(By Tom Devine)

In a stunning act of extremism, the Federal Circuit Court of Appeals has functionally thrown out two statutes unanimously passed by Congress: the Code of Ethics for Government Service and the Whistleblower Protection Act.

The decision, Lachance vs. White, reflects unabashed judicial activism to overturn unanimous congressional mandates.

The case involves an Air Force whistleblower, John White.

In 1992, he was moved and stripped of duties after successfully challenging as gross mismanagement a local command's Quality Education System, a bureaucratic turf builder camouflaged as reform by micromanaging

and imposing de facto military accreditation on participating universities.

Experts inside and outside the government agreed with White.

The Air Force canceled the program after a scathing report by its own experts found the program counterproductive for education and efficiency.

Whistleblowing doesn't come any better than this.

The Merit Systems Protection Board three times ruled in White's favor, each time challenged on technicalities by the Office of Personnel Management.

But the appeals court decided it knew better.

The court concocted a hopelessly unrealistic standard for whistleblowing disclosures to pass muster.

The court said a whistleblower must have had a ''reasonable belief'' that he was revealing misconduct.

This ''reasonable belief'' is the prerequisite to be eligible for reprisal protection, the court found.

At first glance, the court's definition of ''reasonable belief'' is almost boringly innocuous: ''could a disinterested observer with knowledge of the essential facts reasonably conclude . . . gross mismanagement?''

But the devil is in the details. The court warmed up by establishing a duty of loyalty to managers.

''Policymakers have every right to expect loyal, professional service from subordinates,'' the court said.

So much for the Code of Ethics, which is on the wall of every federal agency since unanimous passage in 1980: ''Put loyalty to the highest moral principles and to country above loyalty to persons, party or government department.''

The court decreed that whistleblowing does not include ''policy'' disputes.

But that's not what Congress said in 1994 amendments to the whistleblower protection law: ''A protected disclosure may . . . concern policy or individual misconduct.''

A CRUEL ILLUSION

Most surreal is the court's requirement for MSPB to conduct an independent ''review'' to see if it was reasonable for the employee to believe he revealed misconduct.

And whistleblowers must overcome the presumption that government agencies act ''correctly, fairly, in good faith'' and legally unless there is ''irrefragable'' proof otherwise.

What's ''irrefragable''? My dictionary defines it as ''[i]ncapable of being overthrown; incontestable, undeniable, incontrovertible.''

This means if disagreement is possible, the whistleblower's belief is unreasonable and eligibility for legal protection vanishes.

Not content to render the Whistleblower Protection Act a bad joke, the Court turned it into a Trojan Horse, instructing the board to violate it routinely by searching for evidence that the whistleblower has a conflict of interest as part of its review.

Amendments to the whistleblower law in 1994 outlawed retaliatory investigations—those taken because of protected activity.

These developments are no surprise.

Before Chief Judge Robert Mayer's arrival on the court, he served as deputy special counsel when his office tutored managers and taught courses on how to fire whistleblowers without getting caught.

Mayer's actions helped spark the Whistleblower Protection Act's birth.

Now under his leadership, the Federal Circuit is killing it with a sternly obsessive vengeance.

Under current law, there is no way out in the courts.

Except for unprecedented Supreme Court review, the Federal Circuit Court of Appeals has a monopoly on judicial review of whistleblower decisions by the MSPB. As long as it persists, the Whistleblower Protection Act's promise will be a cruel illusion.

Congress has a clear choice: passively institutionalize its ignorance of executive branch misconduct, or restore its and the public's right to know.

The solution is no mystery:

Pass a legislative definition of ''reasonable belief'' overturning all the nooks and crannies of this case.

Give federal workers the same access to the court that is a private citizen's right—jury trials and an all-circuits judicial review in appeals courts.

It is unrealistic for the government to expect federal employees with second-class rights to provide first-class service to the public.●

EIGHTH ANNIVERSARY OF UKRAINIAN INDEPENDENCE

● Mr. KENNEDY. Mr. President, in 1991, the Ukrainian people, after decades of difficult and often tragic struggle, won their right to self-determination. They declared their independence, as did other peoples of the former Soviet Union, fulfilling the wishes of generations of Ukrainians.

Eight years have now passed since that dramatic time, and Ukraine and U.S.-Ukrainian relations are stronger than ever. We now have a U.S.-Ukraine Joint Commission, chaired by Vice President GORE and President Kuchma, which seeks to improve bilateral relations on a wide range of issues.

A significant part of this effort is the sister city project to help Ukrainian communities develop more effective local government. I'm proud that the City of Lowell in Massachusetts is a sister city with the Ukrainian city of Berdiansk in this worthwhile project.

I especially commend the members of the Ukrainian-American community for their constant courage and commitment in championing the cause of Ukrainian independence over the years. They never gave up this struggle, even during the darkest days of the Cold War. They can be proud of their achievements. Their efforts in recent years have made Ukraine the third largest annual recipient of U.S. assistance. I'm prouder than ever to support their impressive efforts.

I also commend the Ukrainian-American community for its ongoing work to help American high school students understand that the Great Famine of the 1930s was a man-made terror-famine, used by Stalin to suppress the Ukrainian people. Millions of Ukrainians died in this great crime against humanity.

Sadly, the twentieth century has been filled with too many of these massive crimes. We must never forget the atrocities that have been inflicted on millions of citizens in other lands, including the Ukrainian people. We must do all we can to build a better world in the years ahead.●

TRIBUTE FOR MS. LINDA COLEMAN

● Mr. WARNER. Mr. President, I would like to recognize the exceptionally distinguished service of Ms. Linda Coleman, who is leaving Federal Service on September 30, 1999, after 30 years. She has been the mainstay within the Office of the Chief of Legislative Liaison, United States Army for the past 20 years. It is a privilege for me to recognize the many outstanding achievements she has provided the Congress, the United States Army and our great Nation.

Linda Coleman has worked for every Member of the Congress as the Secretary of the Army's legislative liaison within the Army's House Liaison Division, Congressional Inquiry Division, and Programs Division. Initiative, caring service, and professionalism are the terms used to describe Linda Coleman. She has been instrumental in providing information and explaining the diverse programs within the United States Army. Ms. Coleman is an expert in coordinating the interface between the Secretary and Chief of Staff of the Army and Members of Congress. She is an expert at cutting through the red tape of the bureaucracy without losing sight of the fact that taking care of the soldier is the ultimate goal. I have never known of an instance in which Ms. Coleman would back away from doing the right thing for the Army, the soldier or family members, or the Congress she served.

Ms. Coleman has earned a reputation on Capitol Hill as someone who could be relied upon to respond to inquires in a responsive, professional manner. She expanded the Army's understanding of Congress and the Army's role in the legislative process through continuous interaction with Members of Congress and the Army's leadership. Ms. Coleman established procedures to assist in informing and explaining the Army to Congress. Ms. Coleman prepared the Army's senior leaders for all of their meetings with Members of Congress. For each meeting, she prepared the Army senior leader with detailed information on the issues and the interests of the Members of Congress involved in the meetings. Ms. Coleman has been the ''go to'' person in Army Legislative Liaison. When Members of Congress had a really complex issue, the legislative action officers and assistants would go to her for advice.

Ms. Coleman is able to communicate effectively with both military officials and Congressional staff members and has developed superb working relationships. Her professional abilities have earned her the respect and trust which served her, the Army, and Congress so well.